

## Section II Production

### Appendix 18.1

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#### Additional Standard Conditions for Insurance Upon Completion (NC/SR/BR/241(a))

This Commitment is subject to the following additional standard conditions numbered 24 through , which are included below and made a part hereof.

24. HUD hereby agrees to insure said Note and Security Instrument under the provisions of the NHA and the Regulations upon the following conditions:

- a. The Note shall bear interest at the rate of          percent (          %) per annum. Note: Any increase in the interest rate will require reprocessing of the mortgage insurance application and amendment of this Commitment prior to Endorsement. A reduction in the interest rate will require an amendment of this Commitment prior to Endorsement
- b. Payments of interest only on the outstanding principal balance shall be due and payable on the first day of each month, commencing not later than the first day of the month following final endorsement of the Note and Security Instrument for insurance (“Final Endorsement”) and continuing through the first day of the month immediately prior to the date on which the first monthly payment of principal is due.
- c. The first payment to principal (commencement of amortization) shall be due on the first day of the          month following the month in which Final Endorsement occurs. The Note and Security Instrument shall be payable on a level annuity basis by          monthly payments of principal and interest in the amount of \$          each. ~~Monthly principal and interest payments due prior to, or on the first day of the month after, final endorsement of the Note and Security Instrument (“Final Endorsement”) shall be adjusted to the extent that the full principal amount of the Note and Security Instrument has not yet been advanced in order for such payments to equal the sum of (i) interest on the outstanding principal balance plus (ii) the regularly scheduled principal amortization payments due on the Note and Security Instrument assuming that the full amount thereof has been advanced.~~ The maturity and final payment date shall be          years and          months following the due date of the first payment to principal (commencement of amortization).

25. The Note and Security Instrument to be insured shall be in the forms prescribed by HUD for use in connection with loans insured under Section 232 of the NHA in the locality in which

the property is situated. In addition, the Operator shall provide a security agreement, UCC financing statements, and deposit account control agreement(s) granting a first lien security interest in such tangible and intangible personal property related to the Project as may be required by HUD (subject only to liens for taxes and assessments which are not delinquent and such other liens, as with an accounts receivable financing transaction, as may be approved by the Secretary).

26. Attention is directed to the Regulations covering the assignment or the transfer of the insured Note and Security Instrument, in whole or in part, and the transfer of the rights, privileges, and obligations under the contract of mortgage insurance.
27. Prior to Endorsement, the Borrower shall present to HUD a title policy in conformity with the Regulations which shall show that title to the property (or, if approved by the Secretary, a leasehold estate therein) on the date of Endorsement is vested in the Borrower free of all exceptions to title (either junior or prior to said Security Instrument), except said Security Instrument and such other exceptions to title as are specifically determined to be acceptable by the Secretary. Said title policy shall (i) by its terms inure to the benefit of the Lender and the Department of Housing and Urban Development, their successors and assigns, as their interests may appear and (ii) unless otherwise approved by the Secretary, be on the ALTA Loan Policy 2006 Form and include ALTA Forms 3.1-06, 8.1-06, 9-06, 9.6-06, 17-06, 18-06 (or 18.1-06, as appropriate) and 22-06 endorsements and an endorsement deleting the arbitration clause. Additional endorsements may be required based on the specifics of the transaction.
28. The Healthcare Regulatory Agreement - Borrower shall provide, among other things, for the establishment of a Reserve Fund for Replacements (the "Reserve Fund for Replacements") under the control of the Lender by payment of \$            per annum, to be accumulated monthly at the rate of \$            per month (*rounded to the nearest dollar*), commencing on the date of the first payment to principal as established in the Note and Security Instrument unless a later date is agreed upon by the Secretary. ~~In addition to the per annum amount required to be accumulated monthly under the control of the Lender for the Reserve Fund for Replacements, there shall be an initial deposit in the amount of not less than \$            made to the Reserve Fund for Replacements by the Borrower at the time of Initial Endorsement. Attached hereto as Exhibit D is the Reserve for Replacement Funding Schedule which supports the per annum and initial deposit to the Reserve for Replacements.~~

The amount of the annual deposits to the Reserve Fund for Replacements shall be subject to change in accordance with the requirements of the Secretary. In connection therewith, every ten years the Lender shall obtain a new Project Capital Needs Assessment ("PCNA") for HUD to evaluate. The cost of each such PCNA report may be paid from the Reserve Fund

for Replacements. The Lender's Certificate to be delivered prior to Endorsement and the Healthcare Regulatory Agreement – Borrower shall each include a statement confirming the requirement for such periodic PCNA reports.

29. At or before Endorsement, the Lender or its nominee shall collect the following escrows (in the form of cash and/or one or more unconditional and irrevocable letters of credit) to be applied to the following item. At Endorsement, the Lender shall deliver to HUD a Lender's Certificate evidencing the collection of the amounts set forth in this paragraph. All funds deposited with the Lender or its nominee under this paragraph shall be held and disbursed by the Lender or its nominee in accordance with the applicable requirements of the Secretary

- a. Funds in the amount of \$ (Initial Operating Deficit) for application to the expenses of the Project beginning on the date of Endorsement and ending on the later of (1) 12 months after the date of Endorsement or (2) when the project has demonstrated to HUD's satisfaction that the project has achieved a debt service coverage ratio (including Mortgage Insurance Premium) of at least 1.45 for each month of three consecutive months.

The amount of the Initial Operating Deficit escrow will be reanalyzed prior to Endorsement of the Note for insurance. The amount will be adjusted as needed to account for the subject's actual performance in terms of actual occupancy, actual rental rates, and actual expenses. The absorption assumptions will not be reevaluated and will remain the same as projected in the attached IOD Worksheet. HUD may limit the cumulative disbursement amount to the cumulative total forecasted in the IOD worksheet for the like period of time.

- b. Funds for application to taxes, mortgage insurance premiums, property insurance premiums and assessments required by the terms of the Security Instrument accruing subsequent to Final Endorsement, and not included in the proceeds of the Note and Security Instrument in the amount of \$ (Working Capital)

30. It is a condition of this Commitment that any change in ownership upon which this Commitment was predicated must be indicated in writing by the Borrower and such request must be approved in writing by the Secretary. Any principals of the Borrower or Lessee/Operator which are added prior to Endorsement and which were not disclosed in the mortgage insurance application shall be subject to the Secretary's credit review and previous participation clearance before Endorsement. Project principals have been identified to be relied on for financial capacity. Withdrawal of any individual/firm relied on for financial capacity requires prior approval by the Secretary. In addition, withdrawal of such

individual/firm prior to Endorsement could result in HUD declaring this Commitment null and void.

31. Upon Endorsement, the Lender shall pay to HUD in advance, a mortgage insurance premium equal to     % of the principal amount of the Security Instrument to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations. The annual rate of mortgage insurance premium is     %.
32. The Borrower, Operator and/or Management Agent, as applicable, shall maintain professional liability insurance in accordance with the requirements established by the Secretary. The Borrower shall annually provide, or cause to be provided, to HUD a certification of compliance with the Secretary's professional liability insurance requirements.
33. If the Project is subject to an operating lease, prior to Endorsement such lease must (a) be amended to include the Addendum to Operating Lease (HUD-91116-ORCF), (b) provide for lease payments sufficient to cover monthly principal and interest payments under the Security Instrument, escrows required under the Security Instrument and deposits to the Reserve Fund for Replacements required by the Regulatory Agreement, and (c) otherwise comply with applicable requirements of the Secretary. In all cases (regardless of whether there is an operating lease), the Operator must execute and deliver the Healthcare Regulatory Agreement – Operator (HUD-92466A-ORCF).
34. Any accounts receivable financing with respect to the Project will be subject to approval by HUD and the Lender.
35. All financing arrangements (other than the Note and Security Instrument and any other Note and Security Instrument insured by the Secretary), including repayment obligations and other secondary financing, and occupancy restrictions must be fully disclosed to, and approved by, HUD and must comply with the Secretary's requirements applicable to loans insured under the Section of the NHA applicable to the Note and Security Instrument.
36. Pursuant to Form HUD-2880, this Commitment is based on Borrower certifications regarding the absence or use of Tax Credits or Other Government Assistance. If the Borrower's intentions subsequently change, and Tax Credits or Other Government Assistance is applied for or eliminated, Form HUD-2880 must be updated, and HUD reserves the right to unilaterally alter any and all of its underwriting determinations, or revise the terms of the mortgage insurance commitment or regulatory agreement accordingly.
37. HUD reserves the right to examine the Lender's file materials related to the underwriting of the Note and Security Instrument at any time during the ten-year period following

Endorsement. If there is evidence of fraud or misrepresentation by the Lender, HUD reserves its legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements. The Lender agrees to retain, in accessible files, all materials related to the underwriting of the Note and Security Instrument for a period of ten years, even though the Note and Security Instrument itself may be sold to another entity.

38. To the extent that the Borrower has not done so prior to Endorsement, the Borrower must provide to HUD evidence/documentation from the appropriate local/state licensing authorities showing approval for the operation of the Project (or applicable portions thereof) prior to occupancy of the Project (or applicable portion thereof).
39. Should any asbestos containing materials (ACMs) or environmental contaminants be encountered in the course of demolition or construction, they are to be handled in accordance with all applicable federal, state, and local requirements.
40. The Borrower(s), its contractors and subcontractors, shall comply with all applicable Federal labor standards provisions as expressed in the Supplementary Conditions of the Contract for Construction (HUD-92554-ORCF), in connection with the construction of said Project.
41. Prior to start of construction, the Lender must conduct a Preconstruction Conference in accordance with the Lender's Preconstruction Conference Agenda and Lender's Preconstruction Conference Duties.

Prior to the Preconstruction Conference,

- a. There shall be filed with HUD a "Master Set" of the aforesaid Drawings and Specifications of the Project together with the general conditions of the contract for the construction of buildings in the standard form of the American Institute of Architects, current edition, and Supplementary General Conditions, which said Master Set shall remain on file with HUD and be the controlling factor with respect to any matters which may arise as to the language, provisions, and contents of said "Drawings and Specifications." In addition two duplicate sets of said Drawings and Specifications, one entitled "As-Built Set" and one entitled "Inspection Set", shall be furnished.
- b. An Estimated Progress Schedule of Work must be submitted by the general contractor for review and approval by the Secretary. The progress schedule is required by Article 3.10.1 of the AIA General Conditions, which is an integral part of the Construction Contract (HUD-92442-ORCF).
- c. The following items must be submitted:

- i. Building Permits
  - ii. Construction Contract (HUD-92442-ORCF)
  - iii. Contractor's Prevailing Wage Certificate portion of Form HUD-92448
  - iv. Certification regarding Architect's E&O Insurance (with Certificate of Insurance attached) for design and supervisory architects. Both the design architect and supervising architect shall provide evidence of errors and omissions (liability) insurance and shall agree to maintain errors and omissions through acceptance of the 12-month warranty inspection.
  - v. Owner-Architect Agreement(s) (AIA B108), and Amendment to AIA Document B108
  - vi. The aforementioned Inspection Fee
- d. If the property is currently occupied, prior to the Pre-Construction Conference, the borrower must provide evidence that a management conference has been conducted with the HUD Account Executive assigned to the project. If the healthcare facility is not currently occupied, 30 days prior to occupancy a management conference must be conducted. The contact information for the Account Executive assigned to this project is below.

Name: The ORCF Underwriter will complete this

Telephone: The ORCF Underwriter will complete this

Email: The ORCF Underwriter will complete this

42. During the course of construction, HUD and their representatives shall at all times have access to the property and the right to inspect the progress of construction. The inspection of construction by a representative of HUD shall be only for the benefit and protection of the Secretary.
43. Any change in the Drawings and Specifications or in the conditions upon which this Commitment is based, which may occur after the date hereof, shall be explained in writing, or in a supplementary application if required by the Secretary, and must be approved by HUD prior to Final Endorsement. The Secretary's approval of any change described above may be subject to such conditions and qualifications as HUD in his/her discretion may prescribe.
44. The Borrower shall cause the Project to be equipped in order for the Project to operate in accordance with applicable laws, ~~such equipment to include, but not be limited to, the major moveable equipment listed in Exhibit C attached hereto.~~

45. Prior to Occupancy, evidence of flood insurance is required whenever the property is located in an area of special flood hazards in which flood insurance is available under the National Flood Insurance Act. On this project, flood insurance is:

☐ REQUIRED

☐ NOT REQUIRED

46. All comments in the Legal Punch List must be addressed to HUD's satisfaction prior to Endorsement.

47. The Cost Certification must be submitted and approved by HUD prior to submission of the Endorsement Closing Package.

48. A maximum amount of \$        for Interest During Construction has been approved as part of this commitment. Any increase requires HUD approval.

49. A request for the reopening of this Commitment received within 90 days of its expiration must be accompanied by the reopening fee prescribed by the Regulations.

50. This Commitment is conditioned upon and shall not be enforceable against HUD until and unless all conditions to the endorsement stated herein have been satisfied or waived by the Secretary.

51. This Commitment is subject to the conclusions stated on the attachments to this Firm Commitment.

52. Any changes to this commitment require an amendment.

53. This Commitment is subject to Special Conditions lettered A through       , which are attached hereto and made a part hereof.

Attachments: Special Conditions

Exhibit A: Legal Description

Exhibit B: Index to Drawings and Specifications

Exhibit C: Reserve for Replacement Funding Schedule

Form HUD-2328

Form HUD-92264A-ORCF, Maximum Insurable Loan Calculation

Form HUD-92329

Form HUD-92447

Legal Punchlist

Closing Checklist



### **Special Conditions**

- A. As this Firm Commitment is being issued on or after July 12, 2013 (and as announced in the March 14, 2013 Federal Register), the new Section 232 closing documents will be required to be used in the closing of this loan per the HUD Attorney Closing Checklist and HUD Closer Checklist. If there are any inconsistencies between the closing checklists and this Commitment, this Commitment controls.
- B. Prior to closing, the Borrower must certify that between issuance of Firm Commitment and closing, none of the following have occurred:
- Federal, State, municipal and or other regulatory authority action against the project that demonstrates or alleges substantial deficiencies in the operation of the project which may be evidenced by an administrative or judicial proceeding or final audit finding
  - Filing of a bankruptcy petition of Borrower, or Operator
  - Filing of a lawsuit or criminal charges against the Operator or Borrower entity or any principal thereof
  - Placement of a Special Focus Designation or ban on new admissions on the project
- C. Draft closing documents, conforming to the terms of this Commitment, must be submitted not less than 15 business days prior to Endorsement. This Commitment and exhibits referred to herein together with the applicable Regulations constitute the entire agreement among the parties, and acceptance of the terms hereof is evidenced by the signature of the Borrower and Lender upon the lines provided below. Please return one original of this Commitment, signed by the Lender and the Borrower, to the ORCF Underwriter within 10 business days of the date of the Secretary's execution of this Commitment.

### **Add the following Special Conditions if the commitment is an Initial Firm Commitment**

- D. This Commitment shall expire **120** days from the date hereof unless extended by the Secretary. Upon such expiration, all rights and obligations of the respective parties shall cease. Prior to any extension of this Commitment, the Secretary may, at his/her option, reexamine this Commitment to determine whether it shall be extended, shall be extended in the same amount, or shall be amended to include a lesser amount. HUD review and approval of any 3rd Party updates (as needed). HUD may require submission of updated third party reports to extend this commitment beyond its original expiration.
- E. HUD review and approval of the Firm Application - Final Submission.
- F. HUD approval of the General Contractor and Architect(s).



- G. Submission and HUD approval of the final Drawings and Specifications. If there are material changes to the facility design that affect value, HUD may require the submission and HUD approval of a new appraisal and current value.
- H. HUD review and approval of any 3rd Party updates (as needed). HUD may require submission of updated third party reports to extend this commitment beyond its original expiration.
- I. The mortgage amount and other terms and conditions of this commitment may be subject to changes by HUD based on its review of the Firm Application - Final Submission exhibits. The Mortgage Amount will be re-calculated with all applicable criteria prior to closing.
- J. Property and Liability Insurance coverage must meet HUD requirements. HUD's required insurance will be determined by forms HUD-92329 and HUD-92447, which are to be submitted with the Firm Application – Final Submission.